

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3250 OF 1988

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

VITTHALBHAI MOTIBHAI PATEL & ORS.

VERSUS

THE DEPUTY COLLECTOR & ANR.

Appearance:

MR MUNSHI for MR AJPATEL for petitioners

MR VM PANCHOLI, AGP, for respondent No.1

None present for other respondents

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 23/03/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. It is not in dispute that Block No.902 admeasures Acre 5 - 14 Gunthas which is situated in village Vina, Taluka: Nadiad, District: Kaira. Out of this block, the land admeasuring Acre 5 - 2 Gunthas was purchased by sale deed dated 1.4.72 by petitioners. This sale deed has resulted in fragmentation thereof. This sale deed was therefore in breach of provisions of Section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The respondent No.1 initiated proceedings for cancellation of this sale deed and under the order dated 29th September, 1984, accordingly held the sale deed to be in breach of provisions of Section 7 of the Act aforesaid. Necessary directions were issued for eviction of petitioners from the said land. Against this order, the petitioners preferred revision application before the Addl. Chief Secretary, Revenue Department (Appeal), Government of Gujarat, Ahmedabad and that also came to be rejected under the order dated 29.4.88. Hence this special civil application.

#. The learned counsel for the petitioners has made twofold contentions. Firstly it is contended that the action has been taken for cancellation of sale deed by respondent No.1 under the Notification dated 14th September, 1984, after more than 12 years of the sale deed. Only on this ground of delay in initiating the action, what the learned counsel for the petitioner submits that the action taken by respondent No.1 deserves to be set aside. Second contention has been raised that 12 Gunthas of land out of this block stood separated from the block because of the fact that it was a new tenure land and therefore it was not consolidated in the real sense of the term. In support of his contentions the learned counsel for the petitioners placed reliance on the following decisions:

- Mohammad Kavi Mohamad Amin v. Fatmabai Ibrahim
1997(6) SCC 71

- 1988(1) GLH (UJ) 13

#. On the other hand, the learned counsel for respondent No.1 strongly opposed this special civil application. It is contended that only on the ground of delay this action cannot be quashed and set aside as the sale deed was void ab-initio. Reference has been made in this respect to decision of this court in the case of Patel Jividas Trikamdas & Ors. v. District Collector, Mahesana & Ors., reported in 37(2) GLR 688.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. It is true that where limitation has not been prescribed for taking action by the authorities it has to be taken within reasonable time. The action in this case has been taken after 12 years of execution of sale deed. Reliance which has been placed on the decision of the Apex court by learned counsel for the petitioner is not applicable to the present case for the reason that it relates to the provisions as contained u/s.84-C of the Bombay Tenancy & Agricultural Lands Act, 1976. This matter is directly covered under the decision of this court in the case of Patel Jividas Trikamdas & Ors. v. District Collector, Mahesana & Ors. (supra). The sale deed is certainly in violation of the provisions of the Fragmentation Act and in case the orders of the authorities below are quashed and set aside, what this court will do is to uphold the invalid sale deed. Sitting under Article 226/ 227 of the Constitution of India, this court will not perpetuate any illegality. Once illegal action of a party comes to the notice of the court and where that action was accordingly held so by the competent authority under the Act, this court may not reverse those orders only on the ground that the action taken against the petitioner by the respondent is after a considerable long period. If this approach is taken, this Act will basically become redundant and inapplicable. It will become very easy for unscrupulous litigants with the connivance of the concerned officers in the Department not to initiate action for a considerable period and then to file papers etc. The action which has been taken, as per the learned counsel for the petitioners, is bound to be set aside by this court on the ground of delay. It is unfortunate that the officers who are responsible for enforcement of the Act are acting otherwise. When the sale deed was presented for registration before the officer concerned it was his duty to verify whether it is strictly in accordance with the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, or any other Act but at this stage without any scrutiny thereof, the documents were permitted to be registered. It is said by people that papers in the Registration Department roll on the wheels which are properly greased by the persons concerned and that is the reason that nobody bothers whether the sale affected is legal or not. That is not the end of the matter, but in their turn the Revenue Officers, while making necessary corrections in the revenue record on the basis of the sale deed have also

acted in the same fashion and manner as what it has been done by the officers who are responsible for registration of documents. Here, the Revenue Officer directly is connected. It is his duty to verify whether this sale deed executed is in accordance with the provisions of the Act or not. But possibility here also of moving of the papers on greased wheels cannot be overruled. The land has been mutated in the name of petitioners though the basis of correction in the revenue record is the sale deed which is illegal. On the ground of delay if these actions are taken to be immune from the judicial scrutiny, then corruption which is rampant in our country will get encouragement. Delay in taking action ipso-facto is not a sufficient ground to relieve the petitioners. If by passing of time, the petitioners put themselves in irretrievable position then there may be some scope in raising of this contention before this court. When both the authorities below have not considered it to be a fit case to discharge the notice only on the ground of delay, this court sitting under Article 227 of the Constitution of India may not interfere with the orders. Even if two views are possible in the same matter on the material on the record, then the view which has been taken by the lower authorities ordinarily should not have been discarded. The learned counsel for the petitioners has failed to show how by this long delay in initiation of proceedings against the petitioners by respondent No.1, they have been put in irretrievable position.

#. The learned counsel for the petitioners submitted that the petitioners have invested considerable amount of money but except this bald statement, I do not find any material in support of this plea on record of this special civil application. It is a question of fact and on which the petitioners are conspicuously silent. Otherwise also, the petitioners have not filed affidavit in support of these averments. The affidavit which is there is not affirmed. Taking into consideration the totality of the facts of this case, only on the ground of delay in initiation of proceedings by respondent No.1, the orders passed by the lower authorities cannot be quashed and set aside.

#. So far as the second ground taken that 12 Gunthas of land in question stood separated in Block because of the fact that it was a new tenure land, it is suffice to say that nothing has been produced on record in support of this contention. It is a part of Block No.902 and it continues to be its part. The learned counsel for the petitioners also failed to show any provision from the

Act that where the part of the land is of new tenure land, sale of the rest of the part of that land or Survey Number shall not be governed by the provisions of Section 7 of the Act aforesaid.

#. So both on facts as well as law, the learned counsel for the petitioners has failed to make out any case for interference of this court on the basis of these contentions. It is a case where with open eyes sale deed has been executed and as a result of which fragmentation thereof is there. The sale deed is contrary to the provisions of Section 7 of the said Act and only on these two technical grounds these orders of the lower authorities cannot be quashed and set aside.

##. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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(sunil)